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Supreme Court of the United States

OCTOBER TERM, 1952

No. 226

J. LAURITZEN,
Petitioner,

against

EVALD JOHANN LARSEN,
Plaintiff-Respondent.

BRIEF OF AMICI CURIAE ON BEHALF OF THE SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA AND THE SAILORS' UNION OF THE PACIFIC

RICHARD M. CANTOR,
Counsel for Amici Curiae.

GEORGE HALPERN,
of Counsel.

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CONSENT TO FILE BRIEF AS AMICI CURIAE PURSUANT TO RULE 27, PARAGRAPH 9(a) OF THE RULES OF THE UNITED STATES SUPREME COURT

The undersigned, counsel for petitioner and counsel for plaintiff-respondent, hereby consent to the filing of the brief herein by Richard M. Cantor as counsel for Seafarers International Union of North America and Sailors' Union of the Pacific.

Dated: New York, N. Y.,
December 8, 1952.

JAMES M. ESTABROOK
Counsel for Petitioner.

RICHARD M. CANTOR
Counsel for Plaintiff-Respondent.

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BRIEF OF THE SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA AND THE SAILORS' UNION OF THE PACIFIC, AMICI CURIAE, ON THE WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Statement of Interest

The Seafarers' International Union of North America and the Sailors' Union of the Pacific represent some seventy thousand American seamen.

Although this suit, on its surface, affects only the interest of alien seamen and owners, its outcome will have a very substantial effect upon the American Merchant Marine, our members, and the defense of our Government.

As a labor organization, we are concerned not only with the practical benefits of our own members, but, as a matter

of principle, we are also concerned with the welfare of seamen everywhere.

We have worked side by side with these "strangers within our gates" and together we manned the vessels of our country in two wars.

We also cannot and should not forget that foreign seamen manned our vessels and helped rebuild our merchant marine when we lacked the experienced sailors to do so. This created jobs for our seamen and inured to the benefit of our country.

Thus, we have no objection to having foreign seamen receive benefits under our laws.

We also realize that the principles of free trade in a free world give foreign owners and their vessels a right to do business in this country.

But we do object to those foreign owners having an unfair advantage in not being required to live up to the obligations of our laws on the same basis as American owners. This affects our security as well.

No purpose will be served by our repeating the facts and law as stated in the plaintiff-respondent's brief and the other amici curiae briefs filed herein.

But, based on such facts and law, our experience with the operations and the results of such operations on the part of foreign shipowners, granting them the privilege of exemption from a liability imposed by our laws on American shipowners would hasten the deterioration of our merchant marine, cause job losses to our members and result in a weakening of the defense potential of our country.

The Argument

1. Naturally, we are concerned with those issues that are closest to our working conditions.

In that connection we wish to assert our justified and deep-seated objections to any legislation or judicial decision which impliedly or even indirectly may lead to a

lowering of the high standards, imposed by our laws and public policy, required in our Shipping Articles.

We streauously object to the opening wedge leading to the reduction of such standards as is implicitly contained in the claim put forth by petitioner.

He urges this Court to approve Articles signed in this country which violate our law and policy requiring such Articles to be fair, complete and without ambiguity.

The Articles offered in the record were admitted to be indefinite. They were purposely vague in order to hide the real scope of the vessel's voyage. This was and is part of the design or plot underlying the true operations of petitioner's vessel by making it appear that the owner, seamen, Articles and scope of the voyage were all foreign, without any connection, except a casual one, with the United States. As a matter of public record this is not the true situation.

The provision that the seaman could be discharged in any port upon seven days' notice is unconscionable. It is a vestige of the medieval Hanse Town rules.

But the most reprehensible point is the fact that the owner limits his liability to the laws of Denmark. This in a contract, the Articles, signed here and covering, regardless of pretenses to the contrary, a voyage from and to the United States.

In competing with our Merchant Marine and in carrying the goods of our foreign commerce, foreign owners should be compelled to conform to the standards of our Shipping Articles.

Many thousands of foreign seamen sign on and sail out of our ports.

To permit their Articles to contain provisions contrary to our public policy and inimical to our interests would only result in a consequent lowering of our standards. It is the door through which our hard-won rights will be attacked.

With trade diverted through the unfair competition so engendered, American shipowners will clamor for a reduc-

tion in standards and costs in the operation of our vessels. We will be left between the Scylla of unemployment and the Charybdis of lower standards.

This will injure not only our seamen but will affect and depress the economy of the nation.

The validation and approval of such Articles should not, as a matter of national preservation, be considered, no less granted.

2. Permitting the "law of the flag" to govern in all respects the activities of foreign seamen and vessels operating out of our ports and in our trade would be an act of discrimination against our own merchant marine and our seamen. It is both conceded and implicit in petitioner's argument that the economic standards imposed by foreign law are lower than ours. Thus, foreign vessels have a competitive advantage. The ruling of the Court below affords the American merchant marine no discriminatory advantage. It merely imposes equal obligations upon all who do business here.

Petitioner and the intervening governments are seeking a favored position, to the detriment of our own interests.

Our merchant marine is being steadily whittled away by the encroachment of foreign shipowners employing vessels purchased in a great percentage of cases from our own government at ridiculously low prices and labor hired at a far lower scale.

Large organizations of foreign seamen have set up permanent headquarters in our principal ports. Here they maintain regular hiring halls and furnish a constant pool or supply of labor to foreign operated ships such as the one in the case at bar.

Only 40% of the exports and imports of the United States were carried in American bottoms in 1951.

Contrast this with the 60% so carried in 1946.

Should this Court accelerate this trend by placing additional handicaps in the way of our own citizens and granting

a preferred and exempt status to the aliens competing with us?

We do not ask this Court or our Legislature to retaliate.

We do not seek discriminatory treatment on our own behalf.

All we ask is fair play.

If our laws are good enough for us, they should be good enough for our visitors who feed at our board.

3. Illustrations of the inequities created by those seeking to establish petitioner's position are sufficiently documented in the main and amici curiae briefs submitted in support of plaintiff-respondent's position.

4. Petitioner bemoans the likelihood of inequality between Danish seamen signing on in American ports and in foreign ports.

We are pleased that he acknowledges the disparity in the relief afforded between our laws and those of Denmark, and that Danish seamen prefer ours.

If he and his intervening government were sincere in their protestations against inequality, they could remedy the situation by affording all their seamen the increased benefits under their laws.

They do not wish to raise standards. They are interested in lowering them. The Danish Government has admitted that its concern is for dollar credits.

But this Court is confronted here with an even greater issue of inequality.

Is it fair for the 70,000 men of our unions to suffer the hazards of unemployment and the loss of our hard-won working conditions and standards in order to help depress the working conditions of foreign seamen engaged in carrying our commerce so that their owners and governments may gather in more dollars? And when we add the damage to our merchant marine, the injury to our economy and the blow to our defense, we can marvel at the temerity of this argument and the tactlessness of the suggestion.

Yes, inequality is at issue here. But it is the inequality inherent in the exorbitant price we are to pay for the preferred and immune position of foreign owners so that their governments can secure more dollars. For this, petitioner, his government, and all those of like mind are prepared to sacrifice the best interests of the United States and its people, as well as their own nationals.

This is not an exaggeration. The stakes, to these foreign owners and governments, are large. They can be won only at the expense of the United States. The four foreign governments who intervened in the petition for certiorari and the Danish Government on this hearing would not lightly take that step unless it represented a substantial economic advantage. We cannot believe that the mere cost for additional liability premiums was the motivating factor. Certainly they have not added anything to the law not contained in petitioner's brief.

Balancing the inequities posed, those facing the United States are far greater in magnitude and furnish an impelling reason for affirmance of the decision below as a matter of public policy and national interest and in keeping with sound rules of law.

5. The evil consequences of permitting such discriminatory practices within the stream of our commerce is not confined to economic loss alone.

During the last war the Seafarers International Union of North America and the Sailors' Union of the Pacific lost a great many of its members as casualties, both dead and injured, in the defense of our country. American seamen responded quickly and without hesitation to the call in time of national crisis. It will be difficult to furnish the necessary manpower in timely fashion in the future unless our merchant marine is preserved against discriminatory foreign competition. Our foreign "friends" of today may be neutral or ranged against us in the conflict of tomorrow. The United States of America can rely upon no other merchant marine but its very own.

Idle ships and idle men do not make good material for the defense of our land. And, like it or not, the world we live in calls for being prepared for all eventualities. Our Congress is investing a substantial portion of our wealth to that end. Should the courts undo some of that work by permitting foreign operators to destroy our merchant marine through some metaphysical logic favoring the law of the flag?

We respectfully pray that this Court be mindful of the paramount interests of our citizens, especially in those areas where the application of our law supplants discrimination with equality.

CONCLUSION

The overriding national interest of our government clearly requires that the decision below be affirmed.

Respectfully submitted,

RICHARD M. GANTOR,
Counsel for the Seafarers International Union of North America and Sailors' Union of the Pacific.

GEORGE HALPERN,
of Counsel.